IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 86 of 1999
in
SPECIAL CIVIL APPLICATION No 6488 of 1996
with
CIVIL APPLICATION NO. 310 OF 1999
AND
LETTERS PATENT APPEAL NO. 90 OF 1999
in
SPECIAL CIVIL APPLICATION NO. 6486 OF 1996
with
CIVIL APPLICATION NO. 312 OF 1999

For Approval and Signature:
Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KISHORE PANDYA

Appearance:
MR PREMAL JOSHI, ld.AGP for Appellants/applicants in LPAs and CAs.
MS YAMINI J DESAI for Respondents-workmen
Respondent No.2 is deleted.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE M.S.SHAH

Date of decision: 08/07/2003

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Heard learned Counsel appearing for the parties.

2. Admit. Ms.Yamini Desai waives service for respondent-workmen. Leave to delete respondent No.2, Presiding Officer, Labour Court, Junagadh in both the appeals.

3. Both these Appeals are directed against the judgment and order dated 7th October 1998 of the learned Single Judge dismissing Special Civil Applications Nos.6488 and 6486 of 1996 which were filed by the appellants for challenging the judgment and order dated 1st March 1996 passed by the Labour Court, Junagadh in Recovery Applications Nos.167 and 185 of 1994.

4. The respondent in Letters Patent Appeal No.86 of 1999 had filed Recovery Application No. 167 of 1994 by himself and for and on behalf of six Clerks. Similarly the respondent in Letters Patent Appeal No. 90 of 1999 had filed Recovery Application No. 185 of 1994 by himself and for and on behalf of 37 Workcharge employees working under the Deputy Executive Engineer, Roads & Building Deptt. at Porbandar. The contention of the workmen in the above applications was that though they were required to render services like regular workmen, and although the concerned workmen had put in more than 20-30 years of service, they were not paid wages payable to the regular workmen, but were paid as daily wagers. In the Recovery Applications filed before the Labour Court at Porbandar, notices were issued to the employer, appellant No.2 herein having his office at Porbandar. It appears that no reply was filed on behalf of the employer in the Recovery Applications. Thereafter, the Labour Court was established at Junagadh and the above numbered Applications were transferred from Porbandar to Junagadh. The Labour Court at Junagadh also issued notices to appellant No.2 - employer, but none appeared on behalf of the employer and therefore, the Labour Court at Junagadh proceeded to hear and decide the Recovery Applications. The Labour Court noted that though the employer was served, no appearance was filed and that inspite of the opportunities given, the workmen were not cross-examined. Hence, the deposition of the workmen was required to be accepted. The Labour Court accordingly allowed the Recovery Applications and held that the applicant-workmen before the Labour Court were entitled to the amounts as mentioned in the appendix and the employer shall pay the said amount within one month from the receipt of the order. The order itself did not compute the amount, but the appendix to the order was as per the appendix to the Recovery Applications in which the workmen had demanded

the difference of wages between the regular workmen and the daily wagers from the date of appointment.

5. The aforesaid order of the Labour Court came to be challenged by the appellants by filing Special Civil Applications Nos.6488 and 6486 of 1996. After hearing learned Counsel for the parties, the learned Single Judge dismissed the petitions on the ground that though the notices had been served on the employer in both the matters, no reply was filed and the Labour Court waited for two years before finally allowing the applications. The learned Single Judge further noted that no material was produced before the learned Single Judge to assail the order of the Labour Court. Hence, the learned Single Judge dismissed both the petitions. Hence, these two appeals.

6. At the hearing of these appeals, Mr.Premal Joshi, learned AGP has stated that the concerned workmen have already been given the benefits of the Government Resolutions dated 17th October 1988, which Resolutions were issued pursuant to the recommendations of the Dolatbhai Parmar Committee and that since the workmen have already been granted the benefits of the said Resolutions, nothing further is required to be done. It is submitted by him that unfortunately the material available with appellant No.2 - Deputy Executive Engineer could not be produced before the Labour Court or before the learned Single Judge, but if the orders of the Labour Court are allowed to stand, the public exchequer will be saddled with the liability to the tune of Rs.30 lakhs to Rs.40 lakhs.

7. On the other hand, Ms.Yamini Desai, learned Counsel appearing for the respondents workmen has submitted that the respondents workmen do not admit that all the benefits payable to them under the Government Resolutions dated 17.10.1988 are paid to them and she further submits that, no material has been brought on record by the appellants to show that the workmen are paid the benefits. It is further submitted that the workmen have already put in more than 20-30 years of service and they are entitled to get the difference of wages as already awarded by the Labour Court in the Recovery Applications.

8. Having heard learned Counsel for the parties, we are of the view that there was gross negligence on the part of the concerned officers/employees in not attending to the Labour Court. Although their stand is that the notices issued by the Labour Court were not received by

the Office of appellant No.2 - Deputy Executive Engineer, Porbandar, however, from the record produced before us, i.e. Exh.8 indicates that it was a notice issued in Recovery Application No.185 of 1994 and Exh.9 is the acknowledgment signed by an employee in the office of the appellant No.2 - Deputy Executive Engineer, Roads & Building Deptt. Sub-division, Porbandar. From these documents, it is apparent that the notices issued by the Labour Court were served on appellant No.2 and still no appearance was filed on behalf of the employer which omission/inaction resulted into the impugned orders by the Labour Court. Even so, since the question whether the workmen are entitled to get the amounts claimed by them has not been gone into by the Labour Court on merits and in view of the fact that allowing these orders of the Labour Court and the learned Single Judge to stand would result into liability on public exchequer running into lakhs of rupees, without entering into merits, we are of the view that this is a fit case where the impugned orders of the Labour Court as confirmed by the learned Single Judge are required to be set aside and to remand the recovery applications to the Labour Court for decision in accordance with law, subject to the condition that the appellants shall pay each of the workmen covered by the two recovery applications (Nos. 167 and 185 of 1994) an amount of Rs.3,000/- (Rupees Three thousand only) by way of costs. These amounts shall be paid by the appellants by 15th August, 2003.

9. In the result, the appeals are allowed. The impugned orders of the Labour Court passed in Recovery Application Nos. 167 and 185 of 1994 are hereby set aside, subject to the condition that the appellants shall pay each of the workmen covered by the two recovery applications an amount of Rs.3,000/- (Rupees Three thousand only) by way of costs of the proceedings before the learned Single Judge in the above numbered two Special Civil Applications and the present appeals. The aforesaid amounts of costs shall be paid by the appellants to the concerned workmen latest by 15th August, 2003.

The Labour Court shall hear the said Recovery Applications afresh after giving both the parties an opportunity of leading evidence as well as submitting arguments. In order to avoid any scope for doubt or confusion, we direct that the parties shall appear before the Labour Court at Junagadh on 18th August, 2003 at 11.00 AM. The Labour Court, Junagadh shall decide the matter as early as possible and in any case by 31st December, 2003.

Both the appeals are accordingly disposed of in terms of the aforesaid directions.

10. In view of the orders passed in the main appeals, the Civil Applications for stay do not survive and are disposed of accordingly.

(Kshitij R. Vyas, J.)

(M.S. Shah, J.)
Sreeram.